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| APPLICATION NO.  | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO.    |
|--|-------------|----------------------|---------------------|---------------------|
| 10/748,953   | 12/30/2003  | Mary Rose Rice       | 14177-1600          | 7896                |
| 21611  | 7590        | 04/11/2008           | EXAMINER            |                     |
| SNELL & WILMER LLP (OC)<br>600 ANTON BOULEVARD<br>SUITE 1400<br>COSTA MESA, CA 92626 |             |                      |                     | CASCHERA, ANTONIO A |
| ART UNIT   |             | PAPER NUMBER         |                     |                     |
|  |             |                      | 2628                |                     |
|  |             |                      | MAIL DATE           |                     |
|  |             |                      | 04/11/2008          |                     |
|  |             |                      | DELIVERY MODE       |                     |
|  |             |                      | PAPER               |                     |

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

|                              |                        |                     |  |
|------------------------------|------------------------|---------------------|--|
| <b>Office Action Summary</b> | <b>Application No.</b> | <b>Applicant(s)</b> |  |
|                              | 10/748,953             | RICE, MARY ROSE     |  |
|                              | <b>Examiner</b>        | <b>Art Unit</b>     |  |
|                              | Antonio A. Caschera    | 2628                |  |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 25 March 2008.  
 2a) This action is **FINAL**.                    2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1-6,8,10,12-15 and 45-53 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 5) Claim(s) 8,10 and 45-53 is/are allowed.  
 6) Claim(s) 1-4,6 and 12-14 is/are rejected.  
 7) Claim(s) 5 and 15 is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on 01 November 2005 is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

|  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ .                                    |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____.   | 6) <input type="checkbox"/> Other: _____ .                        |

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. Receipt is acknowledged of a request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e) and a submission, filed on 03/25/08.

### ***Claim Objections***

2. Claim 8 is objected to because of the following informalities:
  - a. Claim 8 comprises the phrase, "...one or more physical color coordination paint sample cards adjacent to each chromatic group, the first plurality of physical paint sample cards and the second plurality of physical paint sample cards..." (see 16-17 of claim 8) which should read, "...one or more physical color coordination paint sample cards adjacent to each chromatic group of the first plurality of physical paint sample cards and the second plurality of physical paint sample cards..."

Appropriate correction is required.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1-4, 6 and 12-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Spangler (U.S. Patent 6,270,123 B1), Wright et al. (U.S. Pub 2004/0046802 A1), Lodwick (U.S. Patent 2,203,167) and further in view of Simonis (U.S. Publication 2004/0004639).

In reference to claim 1, Spangler discloses a method for displaying paint color samples in a two-dimensional physical display unit (see columns 3-4, lines 66-3, column 4, lines 42-48, column 1, lines 12-20 and Figure 11), comprising:

selecting a first plurality of paint colors (see column 6, lines 55-61 wherein Spangler discloses selecting an arbitrary starting point in the color spectrum for selecting colors to arrange the colors of the visible color spectrum);

placing the selected first plurality of paint colors on a first plurality of physical paint color sample cards, (see columns 7-8, lines 31-6 wherein Spangler discloses placing selected colors on a first, second, third and fourth plurality of physical color strips);

arranging the first plurality of physical paint sample cards on the display unit so that the first plurality of paint colors are arranged according to groups of different hue and *chroma* with the paint colors on the physical paint sample cards varying in hue, in a first direction, *and varying in chroma, in a second direction*; (see column 8, lines 7-29, column 4, lines 29-65 wherein Spangler discloses the first, second, third and fourth color strips to be arranged on the display rack so that colors vary gradually in hue in a first direction and gradually in lightness in a second direction. Note, Spangler discloses that rows are arranged according to hue and columns of strips on the display rack are arranged according to lightness (see column 8, lines 7-29)) and *arranging one or more color combination paint sample cards adjacent to each group of different hue and chroma physical paint sample cards, each color combination paint sample*

*card containing a plurality of paint samples having the same based hue as the hue of the group it is adjacent to, and a picture of a building or a room painted with the plurality of colors on the color combination paint sample card.*

Spangler does not explicitly disclose arranging colors in a display so that they are varying in hue in a first direction and chroma in a second direction. Wright et al. discloses a color selection system by which the user of the system may generate a palette of colors for use in a color coordinated project (see paragraph 1). Wright et al. discloses the system to comprise of a graphical user interface having a first display area for displaying colors available for selection and a second area for displaying selected colors forming a palette of colors (see paragraph 8, lines 1-4). Wright et al. discloses the system to implement a color map display mode where a palette is displayed on the display according to hue in a one direction (horizontally) and chroma in another direction (vertically) (see paragraph 45, lines 1-9, paragraph 40, paragraph 48 and #110, 150, 152 of Figure 3). It would have been obvious to one of ordinary skill in the art at the time the invention was made to implement the harmonious color displaying techniques of Wright et al. with the color strip displaying and selection techniques of Spangler in order to provide a user of the display selection system a more intuitive, easier way to select colors by organizing colors in such a way that they are harmonious to one another, showing closely related colors (see paragraphs, 8, 9 and 29 of Wright et al.) as they are perceived by the human eye. Neither Spangler nor Wright et al. explicitly disclose arranging further color combination paint sample cards adjacent to each group of different hue and chroma paint sample cards. Lodwick discloses a method for identifying color harmony which enables a user to reproduce accurately and quickly a desired color (see page, 1, left column, lines 1-5). Lodwick discloses the invention to comprise

of a rigid base having directories mounted thereon, the directories made up of a plurality of tone cards with each tone card having a color shown thereon (see page 1, right column, lines 12-32 and Figure 5). Lodwick also discloses arranging a complementary color tone card along with an identification page adjacent to the tone cards so that each identification page includes the tone color its adjacent to a complementary color (see page 1, right column, lines 24-46 and #18, 16, 17, 19 of Figure 1. Note, #19 includes the selected color, under Hue – 53 and its complement Hue – 23 which can be seen on tone card #16 and its associated identification page #18).

Lodwick further discloses the identification page to describe harmonious blends of such colors utilizing the same hue as the complemented hue (see #18, #19 of Figure 1 wherein “Balanced” and “Combines with” hues are based upon the listed complemented hue color.) which the Office interprets as equivalent to having the same base hue as the hue it is adjacent to. Although, Lodwick does not explicitly disclose the identification page actually displaying the color samples, the Office believes that it would have been obvious to one of ordinary skill in the art at the time the invention was made that in addition to listing hue, complementary hue, balanced hue and combinatorial hue colors, showing such colors on such a page/card would provide a further improvement on the invention by showing a "preview" of the colors discussed thus giving a better feel for the actual visualization of the color/paints described. It would have been obvious to one of ordinary skill in the art at the time the invention was made to implement the color tone card displaying techniques of Lodwick with the harmonious color displaying techniques of Wright et al. and color strip displaying and selection techniques of Spangler in order to create a color selection system that not only displays colors to a user but that accurately names the colors and gives mixing formulas and further related complementary colors to a particular selected

color (see page 1, left column, lines 11-18 of Lodwick). Lastly, Spangler et al, Wright et al. nor Lodwick explicitly disclose displaying a picture of a building or a room painted with the plurality of colors of the paint samples/cards. Simonis discloses a decorating design color selection software that gives a user a view of a finished product before a job is actually done (see paragraphs 4-5). Simonis discloses the software including a color palette with color numbers of paints for allowing the user to select colors from sample paint strips and the outlines of the portions of the “job” (i.e. house) to be painted using such colors (see paragraphs 8-19 and the Figure on page 2 of the Publication). Although Simonis discloses such preview of colors on a house to be displayed via software, the Office believes that it would have been obvious to one of ordinary skill in the art to utilizing the processing capabilities of the machine that operates the software of Simonis to physically produce a print-out or paper copy of the displayed and colored house since at the time the invention was made it was known to print out previews of computer defined workspaces including blueprints, word processing documents and computer drawings (Official Notice). The ability to print out previews of computer generated displays allows a user to obtain a physical copy of a computer display output thereby allowing the user to transport such a display for alternate site comparisons and analyzation. It would have been obvious to one of ordinary skill in the art at the time the invention was made to implement the colored display previewing techniques of Simonis with the color tone card displaying techniques of Lodwick, the harmonious color displaying techniques of Wright et al. and color strip displaying and selection techniques of Spangler in order to provide a visual preview of what colors would look like in combination with one another when applied to a physical structure or job such as a house (see

lines 1-4 of paragraph 5 of Simonis) thereby saving time and cost of having to potentially repaint the structure over again due to a dislike in the selected color scheme.

In reference to claims 2 and 13, Spangler, Wright et al., Lodwick and Simonis disclose all of the claim limitations as applied to claims 1 and 12 respectively in addition, since Simonis discloses selected features of the structure (house) to be colored (i.e. trim, shutters, door etc). (see paragraphs 13-19), the Office interprets the size of the painted/colored area of the structure to vary in size according to the size of the trim, shutter, etc. feature of the structure. It would have been obvious to one of ordinary skill in the art at the time the invention was made to implement the colored display previewing techniques of Simonis with the color tone card displaying techniques of Lodwick, the harmonious color displaying techniques of Wright et al. and color strip displaying and selection techniques of Spangler in order to provide a visual preview of what colors would look like in combination with one another when applied to a physical structure or job such as a house (see lines 1-4 of paragraph 5 of Simonis) thereby saving time and cost of having to potentially repaint the structure over again due to a dislike in the selected color scheme.

In reference to claims 3 and 14, Spangler, Wright et al., Lodwick and Simonis disclose all of the claim limitations as applied to claims 1 and 12 respectively. The Office interprets that Spangler inherently allows for adding additional physical strips to a category based on human input since the display strips are placed in a display rack categorized in bases (see column 7, lines 31-41, columns 9-10, 5-17) and are initially stocked and maintained (see column 8, lines 30-47).

In reference to claim 4, Spangler, Wright et al., Lodwick and Simonis disclose all of the claim limitations as applied to claim 1 above. Wright et al. explicitly discloses arranging the colors of the palette into categories, principal, intermediate and finer hues, based on hue angles (or hue colors) (see paragraph 40, last 15 lines and #150 of Figure 3, column headers start with R=Red, to Y=yellow, to G=green etc). Wright et al. discloses the colors arranged in each hue angle by decreasing chroma starting from the top of the column heading towards the bottom (see paragraph 48 and Figure 3, #152, 1/16 to 1/0). It would have been obvious to one of ordinary skill in the art at the time the invention was made to implement the harmonious color displaying techniques of Wright et al. with the color tone card displaying techniques of Lodwick and color strip displaying and selection techniques of Spangler in order to provide a user of the display selection system a more intuitive, easier way to select colors by organizing colors in such a way that they are harmonious to one another, showing closely related colors (see paragraphs, 8, 9 and 29 of Wright et al.) as they are perceived by the human eye.

In reference to claims 6 and 10, Spangler, Wright et al., Lodwick and Simonis disclose all of the claim limitations as applied to claims 1 and 8 respectively. Although Spangler discloses each physical color strip to comprise of a plurality of adjacent color fields varying in hue (see column 7, lines 42-50), Spangler, Lodwick nor Wright et al. explicitly disclose each sample card having two or more paint colors having similar hue but varying or different chromatic values. At the time the invention was made, it would have been obvious to one of ordinary skill in the art to implement the display rack and color selection techniques of Spangler utilizing color strips composed of colors having similar hue but varying chroma. Applicant has not disclosed that specifically implementing physical color cards comprising colors of similar hue and varying

chroma provides an advantage, is used for a particular purpose, or solves a stated problem. One of ordinary skill in the art, furthermore, would have expected Applicant's invention to perform equally well with the plurality of colors per strip, arranged with varying hue and lightness, display and selection techniques of Spangler because the exact content of each paint card of Applicant's claims is seen as a matter decided upon by the inventor and to which best suits the Application at hand. In other words, some inventors may perceive colors varying closely in chroma as a better facilitation for user selection than colors varying closer in hue and therefore may choose to arrange colors by hue instead of chroma. Therefore, it would have been obvious to one of ordinary skill in this art to modify Spangler to obtain the invention as specified in claims 6, 10 and 14.

In reference to claim 12, claim 12 is equivalent in scope to claim 1 and is therefore rejected under like rationale. In addition to the above rationale applied to claim 1, claim 12 does disclose a pint color display system having a physical display unit therefore Spangler discloses a paint color display system to assist customers in the selection of paint colors (see columns 3-4, lines 66-3) and a physical display unit having a two-dimensional array structure to display physical paint color sample cards (see column 4, lines 42-48, column 1, lines 12-20 and Figure 11);

In reference to claim 13, Spangler, Wright et al., Lodwick and Simonis disclose all of the claim limitations as applied to claim 12 above. Spangler discloses each physical color strip to comprise of a plurality of adjacent color fields varying in hue (see column 7, lines 42-50). Spangler discloses selecting an arbitrary starting point in the color spectrum for selecting colors to arrange the colors of the visible color spectrum (see column 6, lines 55-61). Wright et al.

discloses the system to implement a color map display mode where a palette is displayed on the display according to hue in a one direction (horizontally) and chroma in another direction (vertically) (see paragraph 45, lines 1-9, paragraph 40, paragraph 48 and #110, 150, 152 of Figure 3). It would have been obvious to one of ordinary skill in the art at the time the invention was made to implement the harmonious color displaying techniques of Wright et al. with the color tone card displaying techniques of Lodwick and color strip displaying and selection techniques of Spangler in order to provide a user of the display selection system a more intuitive, easier way to select colors by organizing colors in such a way that they are harmonious to one another showing closely related colors (see paragraphs, 8, 9 and 29 of Wright et al.) as they are perceived by the human eye.

***Response to Arguments***

4. The addition of claims 45-53 is noted.
5. Applicant's arguments, see pages 11-14, filed 03/25/08, with respect to the rejection(s) of claim(s) 1-4, 6 and 12-14 under 35 USC 103(a), in view of Spangler, Lodwick and Wright et al. have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of Spangler, Wright et al., Lodwick and a further reference Simonis which is introduced to teach the newly added limitation of including a picture or room painted with the plurality of colors.

***Allowable Subject Matter***

Art Unit: 2628

6. Claims 5 and 15 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

7. Claims 8, 10, 45-53 are allowed.

The following is a statement of reasons for the indication of allowable subject matter:

In reference to claim 8, the prior art of record does not explicitly disclose a first plurality of physical paint sample cards, a second plurality of physical paint samples cards carrying a paint color of similar hue but different chroma to every other physical paint sample card of the second plurality and one or more physical color coordination paint sample cards adjacent to each chromatic group of the first and second plurality, including a picture of a building or room painted with the plurality of paint sample colors on the combination paint sample card, in combination with the further limitations of claim 8. Further note, claim 8 comprises a minor informality as described above but must be corrected for.

In reference to claim 10, claim 10 depends upon allowable claim 8 and is therefore also deemed allowable.

In reference to claims 45 and 50, the prior art of record does not explicitly disclose a first plurality of paint sample cards arranged in hue groups, arranging one or more color combination style cards adjacent to each group of different hue, each combination card having a tri-fold card with three separate sections, each section containing a plurality of paint samples and a picture of a room painted with the plurality of paint samples on the section, each section of the tri-fold card having a picture of a different room, in combination with the further limitations of claims 45 and 50 respectively.

In reference to claims 46-49 and 51-53, claims 46-49 and 51-53 depend upon allowable claims 45 and 50 respectively and are therefore also deemed allowable.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Antonio Caschera whose telephone number is (571) 272-7781. The examiner can normally be reached Monday-Thursday and alternate Fridays between 7:00 AM and 4:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kee Tung, can be reached at (571) 272-7794.

**Any response to this action should be mailed to:**

Commissioner of Patents and Trademarks

Washington, D.C. 20231

**or faxed to:**

**571-273-8300 (Central Fax)**

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Technology Center 2600 Customer Service Office whose telephone number is (571) 272-2600.

/Antonio A Caschera/

Examiner, Art Unit 2628

**4/11/08**